

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1237 OF 1995

The Archdiocese of Goa,
Daman and Dui, through its
Constituted Attorney
Father Victor Rodriques,
Procurator, Archdiocese of
Goa, Daman and Dui, residing at
Paco Patriarcal,
Altino, Panaji, Goa.

... Petitioner

V/s

1. Union of India
2. Collector of Daman, Daman.
3. Mamlatdar of Daman, Daman.

... Respondents

Mr. Aditya Chitale for the petitioner.

Mrs. Ranjana Todankar with Mr. S.S. Pakale for the
respondent No.1.

Mr. Asokan with Mr. Kulkarni for Resp.Nos. 2 and 3.

**CORAM: H.L. GOKHALE &
J.H. BHATIA, JJ.**

DATED: 17TH JULY, 2006

ORAL JUDGMENT (Per Bhatia, J.):

1. The petition is filed by the Archdiocese of Goa, Daman and Diu and the dispute pertains to certain lands situated in two villages of Daman. The properties including agricultural and non-agricultural lands of the villages Marwad and Dalwada were taken over by the

Administration of Daman and Diu in view of Daman (Abolition of Proprietorship of Villages) Regulation 1962. The petitioner contended that the agricultural land was taken over without giving any compensation and the non-agricultural property was also taken over, even though it could not be taken over under the said Regulation of 1962. With these contentions, the petitioners had filed Writ Petition No. 30/B of 1970 before the Panaji Bench of this Court. The writ petition was allowed by the judgment dated 30.3.1983 wherein the direction was given to hold an enquiry for fixing compensation for taking over the lands. It was held that the land under the said Regulation, as amended in 1967, would mean agricultural land. The petitioners were directed to make an application to the Mamlatdar of Daman stating therein those items of the properties which could not fall within the ambit of Regulation and the Mamlatdar was required to pass appropriate orders as to which of the items of the properties in the two villages were not covered by the Regulation, **after giving notice to both sides and after holding the necessary enquiry.** The respondents were further directed to return the possession of those items of the properties which would be determined by the Mamlatdar as not falling within the ambit of the Regulation.

2. In view of the aforesaid judgment and directions given by the High Court, the petitioner approached the Mamlatdar claiming certain items of properties being not agricultural land and being not covered under the said Regulation. By the judgment and order dated 24.5.1985, Mamlatdar, Daman, came to the conclusion that the properties mentioned in the order were non-agricultural lands and were not covered by the ambit of the Regulation and, in the result, he directed that the petitioners are entitled to retain the said properties.

3. In suo-moto revision under Sec. 12-D of the Regulation, the Collector, Daman, set aside the order dated 24.5.1985 passed by the Mamlatdar and remanded the matter to the Mamlatdar, Daman, with a direction that an enquiry should be conducted after giving notices to the persons who are likely to be affected by the enquiry, as from 1962 onwards some of the lands were distributed and allotted to the people, and after an enquiry he should decide the matter. In view of these directions, Mamlatdar, Daman, issued a public notice dated 27.3.1987 specifying the properties claimed to be non-agricultural being not covered by the Regulation by the petitioners and calling upon the public at large that anybody,

likely to be affected, could appear in person to raise objection, claim, etc. The petitioner by an application dated 24.10.1989 contended that only those affected persons, who were not earlier heard in the matter, were to be given hearing and the respondents including the Collector, Daman, who were already heard in the matter before the earlier order of 1985 was passed, could not get an opportunity to file fresh written reply, written statement or to lead any evidence or to cross-examine any of the witnesses, etc. and in view of these objections about the procedure of hearing, the Mamlatdar was requested to pass appropriate orders. The said application was dismissed by order dated 27.1.1995 by the Mamlatdar, Daman. The Mamlatdar observed that as fresh enquiry was commenced after issuing a public notice as per the order passed by the Collector, alongwith others who may join the proceeding, the persons, who were already party to the proceeding are also necessary and fresh orders could be passed only after hearing them. This order dated 27.1.1995 is challenged in the present writ petition. The petitioner seeks writ, order or direction to quash and set aside the said order dated 27.1.1995 and further seeks a direction that the matter before the Mamlatdar should proceed on the basis of evidence already led on behalf

of the petitioner and respondent No.2 i.e. Collector of Daman. They also seek to quash the order of Collector remanding matter to Mamlatdar.

4. Rule was issued by order dated 21.3.1995 and the impugned order of Mamlatdar was stayed.

5. Heard learned counsel Mr. Aditya Chitale for the petitioner and Mrs. Ranjana Todankar with Mr. S. S. Pakale for the respondent No.1. The learned counsel for the petitioner vehemently contended that the Collector could not pass any order in suo-moto revision under Sec.12-D of the Regulation and could not set aside the order of Mamlatdar because he himself was a party to the proceeding. He further contended that the respondents and particularly respondent No.2 had already appeared before the Mamlatdar and after hearing the order dated 24.5.1985 was passed by the Mamlatdar and, therefore, the respondents do not get any right to file fresh reply, written statement or lead evidence. He further contended that the Collector had directed that the enquiry should be conducted after giving notice to all the persons who are likely to be affected by the enquiry. According to the learned counsel for the petitioner, this means that only those persons who were

not previously heard and were likely to be affected by any order that could be passed by the Mamlatdar were to be given hearing and the respondents could not be given that opportunity. We are unable to accept these contentions.

6. Even though the Collector is opponent in the proceeding before the Mamlatdar and he has to protect the interest of the State by virtue of position held by him, under Sec. 12-D of the Regulation he has also powers of suo-moto revision of the orders that may be passed by the Mamlatdar under the said Regulation. The Collector has no personal interest in the matter. He or his representative has to place all the material on record, etc. before the Mamlatdar in the enquiry under the Regulation so that Mamlatdar may come to the correct conclusion as to whether certain property is agricultural land or not and whether such property is covered by the provisions of the Regulation or not. If the Collector deems it necessary, in view of the facts and circumstances of the case, he can certainly exercise suo-moto revisional powers under Sec. 12-D of the Regulation. Therefore, it is difficult to find any fault with the exercise of such powers by the Collector

while passing the order dated 8.1.1987.

7. It appears that rightly or wrongly, certain properties which were found not covered by the Regulation by the Mamlatdar appear to have been allotted

to certain cultivators, etc. If such properties are to be given back to the petitioner, naturally the persons who are allotted these properties will be deprived of the same. The Collector rightly observed that it would be against the principles of natural justice to pass such order without giving an opportunity of hearing to such affected persons during the enquiry. Learned counsel for the respondents has pointed out that the petitioner had challenged the validity of exercise of the suo-moto revisional jurisdiction by the Collector and the order passed by him on 8.1.1987 setting aside the order dated 24.5.1985 passed by the Mamlatdar in Writ Petition No. 944 of 1992 and had withdrawn that writ petition without seeking liberty to file fresh writ petition challenging the same order. He rightly pointed out that in view of this also, present writ petition is not tenable to the extent of challenge to the order passed by the Collector under Sec. 12-D.

8. The learned counsel for the petitioner contended that the respondent No.2 Collector had already cross-examined the witnesses of the petitioner and

produced documents at the time of enquiry before the Mamlatdar on the basis of which the order dated 24.5.1985 was passed and, therefore, respondent No.2 could not be allowed to file fresh written statement or reply nor it could lead any further evidence. It may be noted that the list of the properties which were claimed to be non-agricultural properties and which were allegedly not covered by the Regulation was not given prior to the judgment of this Court in Writ Petition No. 30/B of 1970. In fact, in that judgment this Court had directed the petitioner to make an application to the Mamlatdar, Daman, stating therein those items of properties which they want to urge as not falling within the ambit of Regulation. Naturally, as per this direction, the petitioner filed an application before the Mamlatdar claiming certain properties as non-agricultural. The judgment dated 24.5.1985 by the Mamlatdar reveals that after the said application was

filed, the Talathi in the office of Mamlatdar was called as a witness for the petitioner merely to produce records of the villages Marwad and Belwada. Similarly, one Lourenco Maria Fernandes, who was retired Excise Inspector and who was managing the Church affairs, was examined to depose about the various types of the lands. The judgment of the Mamlatdar does not disclose that any written statement was filed or any evidence was led by the respondents contesting the claim of the petitioner about certain properties of the two villages.

9. When the fresh enquiry is to be held by giving opportunity to the persons who are likely to be affected, naturally the respondents will also get an opportunity to file reply, written statement, to lead evidence and to cross-examine the witnesses of the petitioners. In view of the above circumstances, if this right is refused to the respondents on the ground that they were previously heard before the judgment dated 24.5.1985 by the Mamlatdar, the enquiry may not be complete. There may be several documents and material in possession of the Collector which may be necessary for proper decision of the matter. Therefore, it is difficult to find any fault with the impugned order rejecting the objections of the petitioner.

10. For the abovesaid reasons, the writ petition fails and stands dismissed. Rule stands discharged. However, respondent No.3 Mamlatdar is hereby directed to complete the enquiry and pass the appropriate order, as far as possible, by the end of December, 2006 as this matter is very old.

(H.L. Gokhale, J.)

(J.H. Bhatia, J.)